

§51.60

38 CFR Ch. I (7–1–13 Edition)

(c) *Selection of evacuation facilities.* The following standards and procedures apply to the selection of an evacuation facility in order for VA to continue to pay per diem during an emergency; these standards and procedures also apply to evacuation facilities when veterans are evacuated from a nursing home care facility in which care is being provided pursuant to a contract under 38 U.S.C. 1720.

(1) Each veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food, shelter, toileting, and essential medical care of that veteran.

(2) For veterans evacuated from nursing homes, the following types of facilities may meet the standards under paragraph (c)(1) of this section:

- (i) VA Community Living Centers;
- (ii) VA contract nursing homes;
- (iii) Centers for Medicare and Medicaid certified facilities; and
- (iv) Licensed nursing homes.

NOTE TO PARAGRAPH (c)(2): If none of the above options are available, veterans may be evacuated temporarily to other facilities that meet the standards under paragraph (c)(1) of this section.

(3) For veterans evacuated from domiciliaries, the following types of facilities may meet the standards in paragraph (c)(1) of this section:

- (i) Emergency evacuation facilities identified by the city or state;
- (ii) Assisted living facilities; and
- (iii) Hotels.

(d) *Applicability to adult day health care facilities.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who was receiving adult day health care, and for whom VA was paying per diem, if the adult day health care facility becomes temporarily unavailable due to an emergency. Approval of a temporary facility for such veteran is subject to paragraph (e) of this section. If after 30 days the veteran cannot return to the original adult day health care facility, VA will discontinue per diem payments unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to provide care at the original facility or to relocate an

eligible veteran to a new facility, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the director of the VAMC determines, or the director of the VISN in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

[76 FR 55571, Sept. 8, 2011]

Subpart D—Standards

§51.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and facility management must meet for the State to receive per diem for nursing home care.

§51.70 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility management must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility management in exercising his or her rights.

(3) The resident has the right to freedom from chemical or physical restraint.